

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Natnari Linwong	Team: Team # 2	CCRB Case #: 201107064	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 04/07/2011 10:00 AM	Location of Incident: Lafayette Avenue and White Plains Road	Precinct: 43	18 Mo. SOL 10/7/2012	EO SOL 10/7/2012	
Date/Time CV Reported Tue, 05/31/2011 11:24 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Tue, 05/31/2011 11:24 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Daniel Acosta	11677	924863	PBBX TF

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Jasper Mcrae	28953	900118	PBBX TF

Officer(s)	Allegation	Investigator Recommendation
A.POM Daniel Acosta	Discourtesy: Officer Daniel Acosta spoke obscenely to § 87(2)(b) [REDACTED]	[REDACTED]
B.POM Daniel Acosta	Force: Officer Daniel Acosta used physical force against § 87(2)(b) [REDACTED]	[REDACTED]

### Case Summary

On May 31, 2011, § 87(2)(b) filed a complaint with the CCRB via the call processing system (encl. 3A-B).

On April 7, 2011, around 10:00 A.M., § 87(2)(b) was walking to school near Lafayette Avenue and White Plains Road in the Bronx when she was stopped by Officers Jasper McRae and Daniel Acosta for truancy. She was subsequently arrested for disorderly conduct. The following allegations resulted from the incident:

- **Allegation A – Discourtesy: Officer Daniel Acosta spoke obscenely to** § 87(2)(b)
  - **Allegation B – Force: Officer Daniel Acosta used physical force against** § 87(2)(b)
- § 87(2)(b), § 87(2)(g)

### Results of Investigation

#### Civilian Statements

**Complainant/Victim:** § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b)

#### CCRB Testimony

On June 23, 2011, § 87(2)(b) was interviewed at the CCRB (encl. 4A-G).

On April 7, 2011, around 9:20 A.M., § 87(2)(b) was walking to her school, § 87(2)(b) at § 87(2)(b) in the Bronx. Across the school is § 87(2)(b) where many students drop off their cell phones before school and pick them up afterward. § 87(2)(b) met her friend, § 87(2)(b) at the restaurant.

As they left the restaurant, a black male officer, identified through investigation as Officer Jasper McRae, approached them and asked if they had IDs or school schedules, which they did not. He then asked how old they were, and they responded that they were § 87(2)(b). He told them that because they were minors, they had to come to his van. They entered the van and waited for about fifteen minutes while Officer McRae and his partner, identified through investigation as Officer Daniel Acosta, picked up other kids for truancy. § 87(2)(b) was seated in the second row of the van on the right side.

§ 87(2)(b) grew impatient because she wanted to walk across the street to her school, and around 9:45 A.M., she began to argue with Officer McRae and told him that he was just making overtime money. She intended to provoke him so he would let her leave the van, but he remained calm. However, Officer Acosta got out of the van, opened the door nearest to § 87(2)(b) and told § 87(2)(b) that he was not her father and that she could not talk to anyone like that. § 87(2)(b) was confused about why Officer Acosta was upset. Officer Acosta said, “Get out of the van before I kick your ass.” § 87(2)(b) asked why he was talking like that when she had been talking to Officer McRae, not him. Officer Acosta told her again to get out of the van.

Officer Acosta grabbed § 87(2)(b)'s right arm and knee and pulled her out of the van. Officer McRae told Officer Acosta not to be too aggressive, and Officer Acosta said, "No, I got this." Officer McRae remained in the van. § 87(2)(b) stood up, and Officer Acosta told her to turn around. She asked why. Officer Acosta turned § 87(2)(b) around and handcuffed her. He then pushed § 87(2)(b)'s back so she fell to the ground, put his knee on her back, and pushed her face into the ground. Outside the store were seven to ten witnesses who told Officer Acosta that he should not handle § 87(2)(b) like that because she was female. After the physical interaction, § 87(2)(b) was very angry and yelled at Officer Acosta, using profanity. The entire physical interaction took approximately two and a half minutes.

The officers then dropped the other kids off at school and took § 87(2)(b) to the precinct. § 87(2)(b), § 87(2)(c). A friend of her mother's picked her up from Central Booking and took her to § 87(2)(b) Hospital to receive treatment for the scrapes and bruises she received during the incident. At no point during the interaction did § 87(2)(b) make any physical provocation or movements.

### **Attempts to Contact Witnesses**

Another individual, § 87(2)(b) filed a complaint with the IAB about this incident on April 7, 2011. The case was referred to the CCRB on April 13, 2011 (encl. 3C). The complaint narrative as received from IAB was as follows:

"On 04/07/11 @ 1009 hrs, Operator 1950 connected Reporter § 87(2)(b) to the command center to report the following: § 87(2)(b) states he observed two officers apprehending some kids that may have tried to skip school. § 87(2)(b) states a dark skinned Hispanic officer or black officer had lifted the arms of a black teenage female in the air that looks like it was causing some sort of pain. § 87(2)(b) states the female was then placed in handcuffs and thrown to the ground. § 87(2)(b) states once the female was on the ground the male officer placed his knee in her back. § 87(2)(b) states the officers were driving van number 5832 and they were from Bronx Task Force."

The investigator placed five calls to § 87(2)(b) and sent him two letters between April 14, 2011 and April 18, 2011, leaving messages with each call. However, he did not respond to these contact attempts and case #201104643 was closed by the board on April 30, 2011 as "complainant unavailable."

Upon receipt of § 87(2)(b)'s subsequent complaint regarding the same incident, the investigator made additional attempts to contact § 87(2)(b) as a witness, sending him three additional letters and making three calls between June 24, 2011 and August 16, 2011. However, his phone number has since been out of service and he did not respond to the letters, which were not returned. A search of the Department of Corrections website confirmed that § 87(2)(b) was not incarcerated as of August 16, 2011.

§ 87(2)(b) provided § 87(2)(b) phone number but did not know her address. The investigator made six calls to § 87(2)(b) phone between August 1, 2011 and August 16, 2011. However, § 87(2)(b) did not respond and there was no option to leave a voicemail message. A LexisNexis search conducted on July 7, 2011, returned no results for § 87(2)(b).

The names and dates of birth of three of the other students in the truant van are noted in Officer McRae's memo book: § 87(2)(b). However, no other

information is noted for them. Because they are minors, the investigator was unable to obtain any of the students' truancy referrals or other paperwork, and was thus unable to contact them.

#### **NYPD Statements:**

##### **Subject Officer: OFFICER DANIEL ACOSTA**

- *Officer Acosta is a § 87(2)(b).*
- *Officer Acosta worked from 7:00 A.M. until 3:00 P.M. on April 7, 2011, as youth officer with Officer Jasper McRae. They were dressed in uniform and assigned to marked van #5832.*

##### **Memo Book**

*At 9:50 A.M., § 87(2)(b), § 87(2)(a) 160.50, § 87(2)(b) 12/7/93. At 10:00 A.M., dropped off truants. At 10:45 A.M., at 43<sup>rd</sup> Precinct.*

#### **CCRB Testimony**

Officer Acosta was interviewed at the CCRB on August 16, 2011 (encl. 6A-F).

Around 9:30 A.M. on April 7, 2011, Officers Acosta and McRae were picking up truants and saw § 87(2)(b) entering a bodega rather than going to school. The officers told § 87(2)(b) that they had to take her to school, and she bought a sandwich from the bodega and got in their van. § 87(2)(b) was angry and yelling in the van about police officers not having anything better to do. Officer Acosta was in the van with her, and Officer McRae was outside the van looking for more truants. Officer Acosta explained to her that if she had proof of her age or a school schedule showing that she did not have to be in school at that time, they could let her go, but because she could not produce either, they had to take her to school in the van.

§ 87(2)(b) remained agitated and upset, cursing the police. She waved her hands around as she talked. However, this was talking with her hands rather than a threatening gesture. Officer Acosta needed to gather the kids' pedigree information to fill out referral sheets for them, but § 87(2)(b) continued to yell. Officer McRae entered the van again, and § 87(2)(b) addressed her remarks to him. Officer Acosta told her to calm down and said that if she continued to interfere with the officers' work, they would have to arrest her and take her to the precinct.

§ 87(2)(b) continued yelling, and Officer Acosta exited the van, opened the door, and told her to step out because she was now under arrest. She refused to get out of the van, and Officer Acosta told her that if she did not exit the van, he would have to physically pull her out of the van. She still refused to exit the van. She was sitting sideways on the edge of the seat, facing the door of the van. Officer Acosta took her arm and pulled her down, and she scooted down to a sitting position on the floor of the van. She then stood up and said she was going to go home.

Officer Acosta stood in front of § 87(2)(b) and she tried to walk past him, bumping her shoulder against his because he was in her way. Officer Acosta told her to turn around, and she refused to do so. Officer Acosta said that if she did not turn around, he would forcibly turn her around, but she still refused. Officer Acosta then grabbed § 87(2)(b)'s shoulders or arms, spun her around, and put one handcuff on her. However, she refused to give him her other arm.

Officer Acosta told her that if she did not cooperate, he would force her to cooperate. He took her free arm and pushed down on her elbow, which forced her onto the ground because it was a pressure point. § 87(2)(b) was initially lying face-down on the ground, but she moved her body and tried to get up. Officer Acosta then sat on her lower body, straddling her legs to prevent her

from getting up. He then handcuffed her other arm. He did not put a knee in her back or push her face into the ground and did not know if her face ever made contact with the ground. During this time, Officer McRae exited the van, stood six or seven feet to the right of Officer Acosta, and told § 87(2)(b) to calm down. Officer McRae was not involved in the physical interaction. The interaction took five or six minutes from when Officer Acosta pulled § 87(2)(b) out of the van to when he put her in handcuffs because he was talking to her for much of the time. § 87(2)(b) cursed repeatedly and said she would sue Officer Acosta.

There were many people around telling Officer Acosta that he could not do that to a girl. However, no one else got physically involved. The other kids in the van, including § 87(2)(b)'s friends, were cooperative. Other than bumping into Officer Acosta's shoulder to try to walk past him, § 87(2)(b) did not make any threatening or provocative motions.

Officer Acosta told § 87(2)(b) to stand up and get in the van. She initially refused, and Officer Acosta then said that if she did not get in the van he would force her into the van. § 87(2)(b) then willingly entered the van. The officers dropped the truants off at school and then took § 87(2)(b) to the 43<sup>rd</sup> Precinct. Officer Acosta did not observe any injuries on § 87(2)(b) and she did not complain of any pain or injuries.

Officer Acosta explained to § 87(2)(b) during each step of the physical interaction that if she did not cooperate, he would physically force her to cooperate, but he did so in calm, straightforward language. He not say, "Get out of the van before I kick your ass" or use any other profanity. Officer Acosta did not recall if Officer McRae made any remarks about Officer Acosta being too aggressive.

**Witness Officer: OFFICER JASPER MCRAE**

- *Officer McRae is a § 87(2)(b)*
- *On April 7, 2011, Officer McRae worked from 7:05 A.M. until 3:40 P.M. as truancy officer with Officer Acosta. He was assigned to a marked van and dressed in uniform.*

**Memo Book**

At 9:40 A.M., three truants at § 87(2)(b). At 9:50 A.M., one under by Officer Acosta in front of § 87(2)(b).

**CCRB Testimony**

Officer McRae was interviewed at the CCRB on August 23, 2011 (encl. 7A-D). His statement was consistent with Officer Acosta's with the following exceptions and additional information:

While in the van, § 87(2)(b) became belligerent, talking about her rights and what the police officers could and could not do. The other students in the van told her to calm down, but she continued to curse and complain loudly. After § 87(2)(b) had spoken for about five minutes, Officer Acosta told Officer McRae that § 87(2)(b) had just threatened to spit on Officer McRae. Officer McRae did not hear this himself. Officer McRae did not believe § 87(2)(b) made any physical movements while inside the van.

Officer McRae turned around and told § 87(2)(b) that the other students were being calm and that if she continued to act this way, they would have to arrest her for disorderly conduct. § 87(2)(b) continued to argue with him. While they spoke, Officer Acosta exited the van and went around to

§ 87(2)(b)'s side, opening her door. He said that if she continued to argue, he would arrest her. She continued to argue, and Officer Acosta told her to exit the van. She refused to do so. Officer Acosta told her that he was giving her a lawful order and that if she did not exit the van, he would pull her out and arrest her. § 87(2)(b) still refused to get out. Officer Acosta grabbed her by her jacket and leg and pulled her out of the van. She stumbled out but Officer McRae did not believe she fell to the ground at that point.

Officer Acosta then tried to handcuff her, but § 87(2)(b) refused to put her hands behind her back. She moved her arms towards her front and sides. Her elbows may have made contact with Officer Acosta, but Officer McRae believed her motions were to prevent Officer Acosta from handcuffing her rather than attempting to strike him. She did not otherwise touch Officer Acosta. Officer McRae exited the van in order to assist Officer Acosta. By the time he was outside the van, § 87(2)(b) was face-down on the ground.

Officer McRae did not see how § 87(2)(b) got on the ground and did not know if she fell or if Officer Acosta pushed or threw her to the ground. Officer Acosta was kneeling over her, still trying to gain control of her arms, which she was attempting to keep under her body. Together, the officers grabbed her arms and placed her in cuffs. She refused to let go of her bookbag, so they cuffed her while she was still wearing it. Officer McRae did not recall if Officer Acosta had his knee on § 87(2)(b)'s back at any point during the interaction. He did not see Officer Acosta sit on § 87(2)(b) or push her face into the ground. Other than telling § 87(2)(b) that he would pull her out of the van if she refused to exit, Officer Acosta did not threaten § 87(2)(b) with the use of force. He did not use any profanity towards her.

#### **Medical Record and Photographs (encl. 5A-I, 4E-F)**

§ 87(2)(b)'s medical record from § 87(2)(b) Hospital notes bilateral wrist, arm, and knee pain as well as slight redness to the right wrist and an abrasion to the right elbow and left knee. No swelling or bleeding is noted.

The record contains two narratives of the incident provided by § 87(2)(b) the first is contained in her history of present illness and states: "She was late for school and police questioned her. They cuffed her and threw her forward on her knees. Patient says she was just saying she didn't need to be driven to school and didn't recognize the police officer."

The second, provided during a social service evaluation, is as follows: "She states that she and her friends were put in the police car and the officer, Daniel Acosta, was speaking close to her face. She says that she told him not to spit on her and at that point, Daniel Acosta dragged her from the car, handcuffed her and then threw her to the ground."

§ 87(2)(b) provided two photographs taken by her mother, § 87(2)(b) on April 8, 2011. The first is of her right wrist and appears to show some redness. The other is of her left knee and shows a scrape and some bruising.

§ 87(2)(b), § 87(2)(a) 160.50

§ 87(2)(b)

§ 87(2)(b), § 87(2)(a) 160.50

### **Command Log (encl. 9A)**

§ 87(2)(b)'s physical and mental status is noted in the 43<sup>rd</sup> Precinct command log as “apparently normal.”

### **Status of Civil Proceedings (encl. 10A)**

Neither § 87(2)(b) nor her mother, § 87(2)(b) has filed a Notice of Claim with the City of New York as of August 23, 2011 with regard to this incident.

§ 87(2)(b), § 87(2)(a) 160.50

### **Civilian CCRB History (encl. 2B)**

§ 87(2)(b) has not filed any prior CCRB complaints.

### **Subject Officer CCRB History (encl. 2A)**

Officer Acosta has been a member of the service for 11 years. In case #200713836, Officer Acosta was found to have improperly fired his gun and was given command discipline B. There are no other substantiated CCRB allegations against him.

## **Conclusion**

### **Identification of Subject Officer**

Officer Acosta acknowledging having a physical interaction with § 87(2)(b). Therefore, the allegations are pleaded against him.

### **Allegations Not Pleased**

§ 87(2)(b) alleged that Officer Acosta told her, “Get out of the van before I kick your ass.” This remark is addressed as a discourtesy allegation in Allegation A. The threat of force is not pleaded separately because Officer Acosta did not dispute that he used force against § 87(2)(b) (addressed in Allegation B).

### **Investigative Findings and Recommendations**

#### **Allegation A – Discourtesy: Officer Daniel Acosta spoke obscenely to § 87(2)(b)**

§ 87(2)(b) alleged that Officer Acosta told her, “Get out of the van before I kick your ass.” Officer Acosta denied making this statement or using any profanity towards § 87(2)(b) and Officer McRae denied hearing Officer Acosta make this statement or otherwise use profanity. While both officers denied that Officer Acosta made this particular remark, they both stated that Officer Acosta told § 87(2)(b) that if she refused to exit the van, he would physically pull her out, which he proceeded to do when she continued to refuse.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

**Allegation B – Force: Officer Daniel Acosta used physical force against § 87(2)(b)**

§ 87(2)(b) stated that Officer Acosta grabbed her arm and knee, pulled her out of the van, and told her to turn around. She asked why, and he turned her around and handcuffed her. He then pushed her back so she fell to the ground, put his knee on her back, and pushed her face into the ground. She denied making any physical movements towards Officer Acosta.

Officer Acosta acknowledged pulling § 87(2)(b) out of the van and stated that after he did so, she tried to walk past him, bumping her shoulder against his because he was in her way. Officer McRae did not recall this. Both officers stated that § 87(2)(b) moved her arms to prevent Officer Acosta from handcuffing her. Officer Acosta stated that while trying to handcuff her, he took one of her arms and pushed down on her elbow, which forced her to the ground because it was a pressure point. Officer Acosta stated that § 87(2)(b) moved her body, trying to get up, and that he then sat on her lower body, straddling her legs to prevent her from getting up, and handcuffed her other arm. Officer Acosta denied kneeling § 87(2)(b) in the back or pushing her face into the ground. Officer McRae did not see how § 87(2)(b) got on the ground. He did not recall if Officer Acosta knelt § 87(2)(b)'s back and did not see Officer Acosta sit on § 87(2)(b) or push her face into the ground.

Other than Officer Acosta's assertion that § 87(2)(b) bumped into his shoulder when she tried to walk past him, both officers stated that § 87(2)(b) did not make any threatening or provocative physical movements. §§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Team: \_\_\_\_\_

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Investigator: \_\_\_\_\_  
Signature Print Date

Supervisor: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
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